

Baxter Krutsch - 2/12/2021

<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF TEXAS 3 SHERMAN DIVISION 3 MARK RAKOWSKI, 4 Plaintiff, 5 vs. 6 LENNOX INTERNATIONAL, 7 INC., 8 Defendant. 9 ***** 10 ORAL AND VIDEOTAPED DEPOSITION OF 11 BAXTER KRUTSCH, 12 INDIVIDUALLY AND AS CORPORATE REPRESENTATIVE OF 13 LENNOX INTERNATIONAL, INC. 14 FEBRUARY 12, 2021 (Conducted Remotely via Zoom) 15 ***** 16 ORAL AND VIDEOTAPED DEPOSITION OF BAXTER KRUTSCH, 17 produced as a witness at the instance of the Plaintiff, 18 and duly sworn, was taken in the above-styled and 19 -numbered cause on the 12th day of February, 2021, from 20 9:32 a.m. to 5:19 p.m., before Cindy Dutsch, CSR, RPR in 21 and for the State of Texas, reported by machine 22 shorthand, with the witness located in Clinton, Utah, 23 pursuant to the Federal Rules of Civil Procedure, the 24 Emergency Orders regarding the COVID-19 State of 25 Disaster, and any provisions, if any, stated on the record.</p>	<p>1 2 3 4 Appearances 5 5 Stipulations 269 6 BAXTER KRUTSCH 7 Examination 8 By Mr. Sanford 5 9 Signature and Changes 270 10 Reporter's Certificate 272 11 12 EXHIBITS 13 (None offered) 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>1 A P P E A R A N C E S 2 (Appearing remotely) 3 4 FOR THE PLAINTIFF: 5 Mr. Brian P. Sanford 6 Ms. Elizabeth "BB" Sanford 7 THE SANFORD FIRM 8 1910 Pacific Avenue 9 Suite 15400 10 Dallas, Texas 75201 11 (214) 717-6653 (telephone) 12 (214) 919-0113 (facsimile) 13 bsanford@sanfordfirm.com 14 esanford@sanfordfirm.com 15 16 FOR THE DEFENDANT: 17 Mr. Brian Jorgensen 18 Ms. Victoria L. Bliss 19 JONES DAY 20 2727 North Harwood Street 21 Dallas, Texas 75201 22 (214) 220-3939 (telephone) 23 (214) 969-5100 (facsimile) 24 bmjorgensen@jonesday.com 25 vbliss@jonesday.com 26 27 ALSO PRESENT: 28 Mr. Mark Rakowski 29 Ms. Jodie Michalski 30 31 32 33 34 35</p>	<p>1 P R O C E E D I N G S 2 THE REPORTER: Going on the record at 3 8:32 [sic] a.m. Today's date is February 12, 2021. 4 This is the oral deposition of Baxter Krutsch, and it is 5 being conducted remotely, via Zoom, in accordance with 6 the Emergency Orders regarding the COVID-19 State of 7 Disaster. 8 My name is Cindy Dutsch, and my CSR 9 number is 5554. I will be conducting the proceedings 10 from my residence in Irving, Texas, and the witness is 11 located in Clinton, Utah. 12 Will counsel please state their 13 appearances, where you're presently located, and any 14 agreements for the record. 15 MR. SANFORD: Brian Sanford and Elizabeth 16 "BB" Sanford on behalf of the plaintiff Mark Rakowski, 17 who is also attending via Zoom. We're all in Dallas, 18 Texas. 19 MR. JORGENSEN: This is Brian Jorgensen 20 and Tori Bliss representing the defendant Lennox, and we 21 are both in Dallas, Texas. 22 THE REPORTER: Mr. Jorgensen, you're 23 still pretty quiet, so if you make an objection, you 24 might have to yell at me. 25 MR. JORGENSEN: Okay. I'll try not to</p>

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<p>1 discrimination and retaliation, and investigating 2 reports of discrimination and retaliation, true? 3 A. True. 4 Q. And Item 62, you're the company person to 5 speak on training of plaintiff's supervisors to 6 recognize and prevent discrimination and retaliation in 7 the workplace, true? 8 A. True. 9 Q. And lastly, you're the company person to speak 10 on steps taken to protect plaintiff from discrimination, 11 true? 12 A. True. 13 Q. And the plaintiff in this case is Mark 14 Rakowski, true? 15 A. True. 16 Q. Now, I know you're not designated, and so I -- 17 I need to make a distinction. So you're speaking on 18 behalf of the company for those topics, but I'm also 19 asking you questions individually, as a witness, to the 20 extent you're not speaking on those. 21 And so what I'll -- I'll try to delineate 22 that, and if you can help me delineate that. If I'm 23 asking something and you want to say, look, this is just 24 me personally, I'm not speaking on behalf of the 25 company --</p>	<p>13</p> <p>1 do I know that? 2 Q. Yes. 3 A. My role at the -- at the time as the HR 4 director of Allied Air Enterprises was involved in the 5 process of observing personally, receiving and providing 6 feedback in regards to the matter, and evaluation of the 7 decision process that -- that ultimately resulted in the 8 termination of Mark Rakowski. 9 Q. So tell me about that. 10 What did you observe personally 11 about -- about Mark Rakowski's leadership? 12 A. I mean, yeah, a -- a specific example or do 13 you want me to just give you an example or two that 14 I -- that I observed? 15 Q. Sure, give me a specific example. 16 A. Say -- so personally observed a -- an 17 inability and desire to work and align with the -- the 18 local vice president/general manager of the business, 19 upon which he supported, regarding staying aligned and 20 understanding what the desire -- what the needs and 21 what the support from -- his team needed to be 22 successful. 23 I received feedback from members of the 24 tech support team, under which Mark was the leader of, 25 on several instances that -- upon the time which he</p>
<p>1 A. Okay. 2 Q. -- please tell me as well, all right? 3 A. Okay. 4 Q. Okay. So let me just ask you, are -- are 5 you -- are you speaking on behalf of the company for the 6 reasons that Lennox alleges it terminated Mark Rakowski? 7 MR. JORGENSEN: I'll jump in here. He is 8 not. We are not -- the company has not designated 9 Mr. Krutsch for -- for that topic. 10 MR. SANFORD: All right. 11 Q. So let me just ask you then as -- in your 12 individual capacity. 13 What is your understanding personally, 14 not as a company representative, of Lennox's reasons or 15 reason for firing Mark Rakowski? 16 A. The -- the reason for Mark Rakowski's 17 termination was as a result of his inability to 18 effectively lead his team, engage his team, motivate his 19 team from the aspect of -- of expected leadership 20 behaviors of a -- of an executive leader at the 21 organization. 22 Q. How do you know that Lennox fired Mark 23 Rakowski because of alleged inability to be an effective 24 leader or engage his team? 25 A. So that's the question, how -- how do I -- how</p>	<p>14</p> <p>16</p> <p>1 resumed direct leadership because there was a vacancy in 2 the manager of the department, that the morale, the 3 engagement, and the satisfaction of the team was -- was 4 declining as a result of his leadership style and the 5 interactions he had with the team up to and including 6 the process of backfilling the position with some 7 potential internal candidates and how that was handled. 8 And the conversations that Mark had with 9 the team moving through that process resulted in 10 employees resigning from the organization, making 11 statements along the conversations of, I can't work 12 for -- I can't work for somebody like that. 13 Q. So who resigned saying that they can't work 14 for someone like that? 15 A. His name is Jason Lotsey. 16 THE REPORTER: I'm sorry, repeat the last 17 name? 18 THE WITNESS: Lotsey, L-o-t-s-e-y. 19 THE REPORTER: Thank you. 20 Q. Who else? 21 A. He was the -- he was the one resignation. The 22 other was -- that applied for it, his name was Kyle 23 Brown and he ultimately transferred to a different 24 department. 25 Q. And what did Kyle Brown tell you?</p>

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<p>1 A. The same thing, that he was informed -- what 2 ended up happening in that situation is he was informed 3 that the only time -- he -- he told me, the only time 4 that Mark comes up is when he is mad and there's a 5 problem and he just points at the numbers and doesn't 6 ask for any context or understand what we go through on 7 a day-to-day basis; the only time he comes and talks to 8 us is when he's mad at us.</p> <p>9 And then in result of the -- the 10 interviewing with him and Jason, they both were deemed 11 not ready for the job. And they both spoke afterwards 12 how that conversation went and both shared that he 13 ultimately told them the same thing, that he was 14 personally grooming each one of them for that position 15 in the future, made the same -- in -- in their 16 viewpoint, the same promise to each of them, in essence, 17 being perceived to them as he was lying to them, and 18 they can't work for somebody who's not going to be 19 honest with them.</p> <p>20 Q. So I don't understand your -- what was the 21 lie?</p> <p>22 A. He told them that he personally picked them 23 and was going to be grooming them to take over the 24 position.</p> <p>25 Q. How was that the lie?</p>	<p>17</p> <p>1 to people on his team not being willing to work for him 2 as their leader.</p> <p>3 Q. So did you talk to other people on his team?</p> <p>4 A. Not a specific conversation that I -- that I 5 can recall.</p> <p>6 Q. So you didn't start an investigation as to 7 whether or not Mr. Kowalski [sic] was an effective 8 leader, engaged his team, had an ability to lead his 9 team?</p> <p>10 A. Well, I had general --</p> <p>11 MR. JORGENSEN: Objection, form.</p> <p>12 A. -- conversations with folks in passing and 13 stopping in my office regarding just my role as HR and 14 how things are going, you know, and they shared with me 15 frustrations that they'd had, stresses that they have in 16 the business, and we would -- we would talk through 17 them.</p> <p>18 I did not have a -- if you're saying do I 19 have a dedicated investigation on a -- on a specific 20 matter, I do not have one.</p> <p>21 Q. So just to be clear, did -- did you tell or 22 give -- did you tell Mark Rakowski that people were 23 accusing him of lying?</p> <p>24 A. I told him that they said that he had promised 25 them that he was grooming them for the job.</p>
<p>18</p> <p>1 A. Because he told that same thing to two people, 2 and you can't be personally grooming two people for the 3 same position, telling them that they're the one he has 4 chosen.</p> <p>5 Q. And so you talked to -- to Mark Rakowski about 6 that, whether or not that was true or not?</p> <p>7 A. I asked him what his conversations were with 8 them around that -- around the feedback. We aligned 9 prior to what the feedback was going to be, and that was 10 not the conversation that we aligned that he was going 11 to share with them.</p> <p>12 Q. And so you asked point blank Mark Rakowski, 13 why did you lie to these two gentlemen, or is it true 14 that you lied to these two gentlemen?</p> <p>15 A. I asked him what the conversation was with the 16 two gentlemen. He shared with me he did not share -- I 17 asked him if he -- if he committed to either one of them 18 that they would be selected, and he said that he did 19 not.</p> <p>20 Q. So you chose to believe the other two 21 individuals?</p> <p>22 A. They both shared the same story. As a result 23 of that, one of them quit regarding -- well, I'll -- 24 I -- what I know is that the action, behavior, and the 25 conversations that Mark would have had with his team led</p>	<p>20</p> <p>1 Q. And he told you that's not true?</p> <p>2 A. He said that is not what I said to them.</p> <p>3 Q. Let's talk about that you're -- you said that 4 you witnessed that -- well, first of all, before we do 5 that, anybody else besides Jason Lotsey and Kyle 6 Brown --</p> <p>7 MR. JORGENSEN: Objection, form.</p> <p>8 Q. -- on his team that you talked to that had 9 problems with him?</p> <p>10 A. On -- on his direct team?</p> <p>11 Q. Yes.</p> <p>12 A. I cannot think of a -- I -- I -- I can't think 13 of right now a specific conversation that I would have 14 had with somebody on his team directly in relation to 15 having a problem with Mark.</p> <p>16 Q. So then you said that he couldn't align with 17 the vice president, right?</p> <p>18 A. Yeah, with the vice president and general 19 manager.</p> <p>20 Q. And who was that?</p> <p>21 A. Joe Nassab.</p> <p>22 Q. How do you know he could not -- Mark Rakowski 23 could not align with Joe Nassab, the vice president and 24 general manager?</p> <p>25 A. Based on the conversation that I had with Mark</p>

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<p>269</p> <p>1 questions for trial. 2 THE REPORTER: The deposition is 3 complete. At this time will counsel please state their 4 stipulations with regard to custody of the transcript 5 and any other pertinent matters you want on the record? 6 MR. SANFORD: I'll keep the original. 7 Do you want the opportunity to read and 8 sign? 9 MR. JORGENSEN: Yes, we do. 10 MR. SANFORD: Okay. 11 THE REPORTER: Okay. Off the record at 12 5:19. 13 (Proceedings concluded at 5:19 p.m.) 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>271</p> <p>1 ACKNOWLEDGMENT OF DEPONENT 2 I, _____, do hereby certify that I 3 have read the foregoing pages, and that the same is a 4 correct transcription of the answers given by me to the 5 questions therein propounded, except for the corrections 6 or changes in form or substance, if any, noted on the 7 attached Errata. 8 9</p> <hr/> <p>10 WITNESS NAME _____ DATE _____ 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>270</p> <p>1 ERRATA 2 WITNESS NAME: Baxter Krutsch 3 DATE OF DEPOSITION: February 12, 2021 4 PAGE NO. LINE NO. CHANGE REASON FOR CHANGE 5 _____ 6 _____ 7 _____ 8 _____ 9 _____ 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 _____ 21 _____ 22 _____ 23 _____ 24 _____ 25 _____</p>	<p>272</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF TEXAS 3 SHERMAN DIVISION 4 MARK RAKOWSKI, * 5 Plaintiff, * 6 LENNOX INTERNATIONAL, * 7 INC., * 8 Defendant. * 9 10 ***** 11 REPORTER'S CERTIFICATION 12 ORAL AND VIDEOTAPED DEPOSITION OF 13 BAXTER KRUTSCH, 14 INDIVIDUALLY AND AS CORPORATE REPRESENTATIVE OF 15 LENNOX INTERNATIONAL, INC. 16 FEBRUARY 12, 2021 17 (Conducted Remotely via Zoom) 18 ***** 19 I, CINDY DUTSCH, Certified Shorthand Reporter 20 in and for the State of Texas, hereby certify to the 21 following: 22 That the witness, BAXTER KRUTSCH, was duly 23 sworn by me and that the transcript of the oral 24 deposition is a true record of the testimony given by 25 the witness; 26 I further certify that pursuant to FRCP Rule 27 30(f)(1) that the signature of the deponent: 28 _____ was requested by the deponent or a party</p>

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1 before the completion of the deposition and is to be
2 returned within 30 days from date of receipt of the
3 transcript. If returned, the attached Errata contain
4 any changes and the reasons therefor;

5 _____ was not requested by the deponent or a
6 party before the completion of the deposition.

7 I further certify that I am neither counsel
8 for, related to, nor employed by any of the parties or
9 attorneys to the action in which this proceeding was
10 taken. Further, I am not a relative or employee of any
11 attorney of record in this cause, nor am I financially
12 or otherwise interested in the outcome of the action.

13 Subscribed and sworn to on this the 26th day
14 of February, 2021.

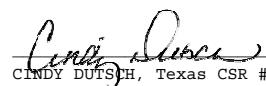
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CINDY DUTSCH, Texas CSR #5554



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